

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

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|-----------------------------|---|------------------------------------|
| ADRIAN HANNI, |) | CASE NO. 1:10 CV 1271 |
| |) | |
| Petitioner, |) | |
| |) | |
| v. |) | JUDGE DONALD C. NUGENT |
| |) | |
| KEITH SMITH, Warden, |) | Magistrate Judge Greg White |
| |) | |
| Respondent. |) | <u>AMENDED MEMORANDUM</u> |
| |) | <u>OPINION AND ORDER</u> |

This matter is before the Court on the Report and Recommendation issued by Magistrate Judge Greg White (Docket #12), recommending that the Request for Voluntary Dismissal of Habeas Petition filed by Petitioner Adrian Hanni (Docket #9) be granted. The Court previously filed a Memorandum and Opinion and a Judgment adopting the Magistrate Judge's Report and Recommendation. (ECF # 14, 15). The original Opinion and Judgment, however, were issued without the benefit of the Objections filed by the Ohio Attorney General on behalf of the Respondent.

When objections are made to a report and recommendation of a magistrate judge, the district court reviews the case *de novo*. FED. R. CIV. P. 72(b) provides:

The district judge must determine de novo any part of the magistrate judge's disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.

Having reviewed the magistrate judge's disposition de novo, and having found that the objections are very well-reasoned, well-supported, and ultimately extremely persuasive, the Court adopts the reasoning set forth in the Respondent's Objections and finds that the Report and Recommendation should be overruled. For the reasons set forth in the Respondent's Objections, the Memorandum and Opinion (ECF #14) and Judgment Order (ECF #15) issued on February 10, 2011 are hereby vacated, and this case is remanded to the Magistrate to determine whether the petitioner is willing to dismiss the action with prejudice, or, in the alternative, for an report and recommendation addressing the merits of the petition. **IT IS SO ORDERED.**

/s/ Donald C. Nugent
DONALD C. NUGENT
United States District Judge

DATED: February 10, 2010